

# Means Test and Clerk's Notice re: Presumption of Abuse 11 U.S.C. §707(b)

- New Filing Requirement:

**Individual** Debtors under chapters 7, 11 and 13 of the Bankruptcy Code will now be required to complete and file **a new form with financial information on it**. For Chapter 7, this form will determine if a presumption of abuse arises (means test).

# New or Amended Official Forms to Implement Requirement

- Three new Official Forms (by chapter):
  - Chapter 7: **Form 22A** - Statement of Current Monthly Income and Means Test Calculation
  - Chapter 11: **Form 22B** - Statement of Current Monthly Income; and
  - Chapter 13: **Form 22C** - Statement of Current Monthly Income and Disposable Income Test Calculation

# Amended Interim Local Rule to Implement New Filing Requirements

- **Interim Local Rule 1007-1** (Amended to separate out which documents are due **within two business days** and which are due **within 15 days**)
- **New Documents due within 15 days of Filing:**
  - Forms 22A, B or C, as applicable;
  - The Presumption of Abuse checkbox (Chapter 7 cases only);
  - 60 days of Payment Advices, and
  - Form 19B re Petition Preparers, if applicable
- **New Document due within 2 Business Days:**
  - Certificate of Credit Counseling

# New Clerk Noticing Requirement

- Clerk is required to provide **notice of whether or not the presumption of abuse arises under Chapter 7 within 10 days of filing.** This notice will be accomplished using the **341 Meeting of Creditors Notice**, which is amended to include a **new section regarding Presumption of Abuse (Forms 9A and 9C).**

## **New Case Opening and Deficiency Procedure:**

- During case opening, clerks will check to determine if the **correct Form 22 (A, B or C, depending on chapter) is filed with the petition**. If not filed with the petition, the 15 Day Notice of Missing Documents form will be issued.
- In addition, if it is a Chapter 7 case, the debtor must also complete the **checkbox at the top of form 22A** indicating whether or not the presumption of abuse arises. If neither checkbox is marked, Form 22A is defective and the 15 Day Notice of Missing Documents form will be issued.

## Procedure for Electronically Filed Cases

- If a Chapter 7 petition is filed electronically using the **Case Opening event**, a new drop down box (Means Test Prompt) will appear for the CM/ECF filer to select whether there is a presumption of abuse (Yes, No, Unknown). **This prompt will determine what language is included on the 341 Notice to creditors.**

# Procedure for Electronically Filed Cases con't

- **If Form 22 is filed after the initial case opening, 3 new events are available:**
  - Chapter 7 Statement of Current Monthly Income and Means Test Calculation (Form 22A) (event includes the Means Test prompt).
  - Chapter 11 Statement of Current Monthly Income (Form 22B )
  - Chapter 13 Statement of Current Monthly Income and Disposable Income Calculation (Form 22C)
- **Form 22 must be filed separately** (if filed after case opening) using one of these three events **(separately from other missing documents)** in order to answer means test question. If presumption is YES, the event will generate a notice to creditors called Clerk's Notice of Statement of Presumption of Abuse.

## **New Related Event:**

- Motion for Exemption from Means Test
- This exemption motion may be filed **if the debtor is a disabled veteran and the indebtedness occurred primarily during a period during which he or she was: (1) on active duty or (2) performing a homeland defense activity.** New checkbox for this declaration on Means Test Form 22A.